

The Times of India

Title : ITAT ruling gives a boost to black money fight

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Location :

Mumbai

Article Date : 11/14/2014

'Funds In Discretionary Trust's Liechtenstein Bank Ac Undisclosed Income Of Beneficiaries'

In the first ever ruling relating to taxation of black money stashed in overseas tax havens, the Mumbai bench of the Income Tax Appellate Tribunal (ITAT) has given the taxman a lot to cheer.

Funds aggregating \$2.4 million (Rs 11.73 crore approximately) as of December 31, 2001, held in a Liechtenstein bank account of Ambrunova Trust (a discretionary trust), were held to be undisclosed income of beneficiaries, who are Indian residents. The ITAT held that the funds were taxable in India in the hands of the beneficiaries.

The ITAT observed, "Discretionary trusts are created for the benefit of specific persons and those persons need not necessarily control the affairs of the trust. However, they remain the sole beneficiaries of the trust. As the beneficiaries had not disclosed the Liechtenstein bank account in their income-tax (I-T) returns, it was their undisclosed or unaccounted income."

Black money typically refers to unaccounted money on which tax has not been paid.

The ITAT upheld the additions made by the tax department to the taxable income of the beneficiaries of Ambrunova Trust.

The ruling came in the case of Mohan Manoj Dhupelia and two of his relatives who were beneficiaries in the overseas trust. Dhupelia had filed a tax return on August 1, 2002, showing a total income of Rs 1.97 lakh. The tax officer, based on documents and information received subsequently by the tax department, reopened the assessment and added Rs 2.34 crore (nearly 25% of the total funds in the trust's bank account of Rs 11.73 crore) to Dhupelia's taxable income. The beneficiaries filed an appeal and the matter reached the ITAT.

Dhupelia submitted to the ITAT that re-opening of the assessment was bad in law as the principal of natural justice was violated. He claimed the documents based on which his I-T case was re-opened were unauthenticated and unverified. Since it was a discretionary trust, no income accrued or was credited to him as the beneficiary, he contended. In fact, his name was not among the beneficiaries of the trust and he was not liable to pay any taxes on the trust funds, he claimed. He also argued that there was no evidence to show that he had made these deposits (stashed money overseas) in the name of the trust. He also contended that if at all tax was to be charged, it could be levied only on \$13,500 (Rs 6.58 lakh approximately) earned by the trust and not the entire fund standing in the trust's Liechtenstein bank account.

In the course of the appeal proceedings, the ITAT referred to exhibits from earlier investigations and hearings of a US Senate Sub-Committee in the context of funds held in Liechtenstein banks. Based on facts and evidence submitted by the tax department, the ITAT set aside the arguments of Dhupelia.

Income tax officials point out that the favourable decision and the recent regulatory amendments will help them in their crackdown on overseas black money.

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